IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5068 OF 2003

Shri Rakesh Kapoor .. Applicant.

V/s.

The State of Maharashtra ..Respondents.

Shri Vijay Pradhan with J.S.Kini for the Applicant.
Shri V.B.Konde-Deshmukh,APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 28, 2005

PC :-

. Heard counsel for the parties.

2. By this Application, it is prayed that the criminal action pending before the Metropolitan Magistrate, 19th Esplanade Court, Bombay, between the parties be stayed till the hearing and disposal of the civil Suit No. 1944 of 1983, which is pending in this court.

3. Similar prayer was made before the Magistrate on the earlier occasion, which was granted by the learned Magistrate. Against the said decision, revision was filed before this court being criminal

revision application No. 491/1986. The said revision was finally heard and as can be discerned from the order dated April 24, 1992, both the parties agreed that instead of inviting the judgement which may affect the trial one way or the other, an arrangement be worked out as has been noted in the said order. As per the said arrangement, if the trial of the civil suit pending before this court was not to be effectively commenced within one year from the date of the said order, the criminal action was to proceed on its own merits in accordance with law. This order was accepted by both the parties; and as the civil suit pending before this court did not effectively commence before expiry of one year's period, the criminal action proceeded further. It is stated that around nine witnesses have been examined so far. But the grievance now made is that the trial is not proceeding on day-today basis and, in fact, the learned Magistrate has expressed his inability to do so in his order dated 2nd September, 2001. Assuming that such observations have been made in the order dated 2nd September, 2001, that by itself cannot be the basis to straightway accede to the prayer made in this application. On the other hand, the parties are bound by the order, invited from this court in the above

criminal revision Application No. 491/1986, decided on April 24, 1992.

4. It is further contended that the Accused will suffer prejudice in the criminal action by requiring them to disclose the defence. This submission overlooks that the pleadings in the civil suit have already been filed and completed and in fact the parties were prepared to go on for trial of the civil suit; which means that the defence of the respective parties is already disclosed in the civil action pending between them. In that view of the matter, this argument is not available to the applicant so as to justify the request to stay the criminal action, assuming such plea was available.

5. It is next contended that civil suit is already on board before this court and it may reach for hearing. The Board of this court, which is annexed as Exh. 'J' is of 30th August, 2003. The present application has remained pending for almost one year but no progress has been made in respect of the civil action pending between the parties. The latest Board of this court, in respect of civil cases, is not placed before this court. Indeed, there are

older matters pending before this court than the civil suits of 1983. (Perhaps the oldest suit is of year 1971). It is unlikely that the civil case will proceed immediately. In any case, merely because civil action is pending, it cannot be the basis to accede to the request of stay of the criminal proceedings pending before the learned Magistrate.

6. In my opinion, this application deserves to be disposed of with direction to the learned Magistrate to proceed with the trial on day- today basis and conclude the same as early as possible, preferably in six months from the receipt of the writ of this court, as substantial evidence has already been adduced on behalf of the prosecution and the criminal action is pending for unduly long time.

7. Needless to observe that the trial will proceed on its own merits in accordance with law, uninfluenced by any observations made in this order. All contentions available for fair trial to the applicant may be dealt with by the trial court in accordance with law.

8. Ordered accordingly.

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